



ATTORNEY GENERAL OF TEXAS
G R E G A B B O T T

March 30, 2005

Ms. Melanie Villalobos
Public Information Officer
San Antonio Housing Authority
P. O. Box 1300
San Antonio, Texas 78295-1300

OR2005-02668

Dear Ms. Villalobos:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 220598.

The San Antonio Housing Authority (the "SAHA") received a request for the certified payroll from RKJ Construction's ["RKJ"] work on a specified SAHA project. You state that the requestor subsequently narrowed his request to include only the names of the employees of RKJ and its subcontractors. Although you assert that the requested information may be excepted from disclosure under various provisions of the Act, you make no arguments regarding these exceptions. Instead, pursuant to section 552.305 of the Government Code, you notified third party RKJ of the request and of its opportunity to submit comments to this office. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have received correspondence from RKJ. We have also received comments from the requestor. *See* Gov't Code § 552.304 (allowing interested party to submit comments indicating why requested information should or should not be released). We have considered all submitted arguments.

RKJ contends that the requested information is not "public information" under the Act, and therefore it is not subject to public disclosure. *See* Gov't Code § 552.021 (indicating that Act is only applicable to "public information"). Section 552.002(a) of the Government Code defines "public information" as information "collected, assembled, or maintained under a law or ordinance or in connection with transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or

has a right of access to it.” Gov’t Code § 552.002(a). Thus, information is subject to the Act even if a governmental body does not physically possess the information, if the information is collected, assembled, or maintained for a governmental body and the governmental body owns the information or has a right of access to the information.

In this instance, the requestor seeks information from the certified payroll records of RKJ, a contractor on a SAHA construction project. Chapter 2258 of the Government Code is applicable to prevailing wage rates for public works projects. Section 2258.021(a) provides that workers, laborers, or mechanics employed by or on behalf of the state or a political subdivision of the state shall be paid “[n]ot less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed[.]” Section 2258.024 requires the contractor and each subcontractor to keep a record of the name and occupation of each worker and the actual per diem wages paid to each worker employed on the project. *See id.* § 2258.024(a). Section 2258.024 also provides that this record “shall be open at all reasonable hours to inspection by the officers and agents of the public body.” *Id.* § 2258.024(b); *see also id.* § 2258.058 (criminal penalty for violation of Gov’t Code § 2258.024).

The requestor seeks the names of employees of RKJ and its subcontractors from the certified payroll records prepared by RKJ. RKJ states that the SAHA does not maintain the certified payrolls of RKJ. Accordingly, we find that the requested payroll records do not constitute information collected, assembled, or maintained by the SAHA for purposes of section 552.002(a)(1) of the Government Code. RKJ also states that it does not prepare the requested payroll records as the agent of the SAHA. Instead, RKJ does so in the performance of its own statutory duties under section 2258.024 of the Government Code. Therefore, we conclude that the requested payroll records are not information collected, assembled, or maintained for the SAHA for purposes of section 552.002(a)(2) of the Government Code. *See also* Open Records Decision No. 558 (1990) (information is subject to chapter 552 of Government Code, even though it is not in governmental body’s physical custody, where third party prepared information on governmental body’s behalf and makes it available to governmental body). Consequently, the requested payroll records do not constitute public information under section 552.002 of the Government Code, and thus the SAHA is not required to make these records available to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).


If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,


Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/krl

Ref: ID# 220598

Enc. Submitted documents

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